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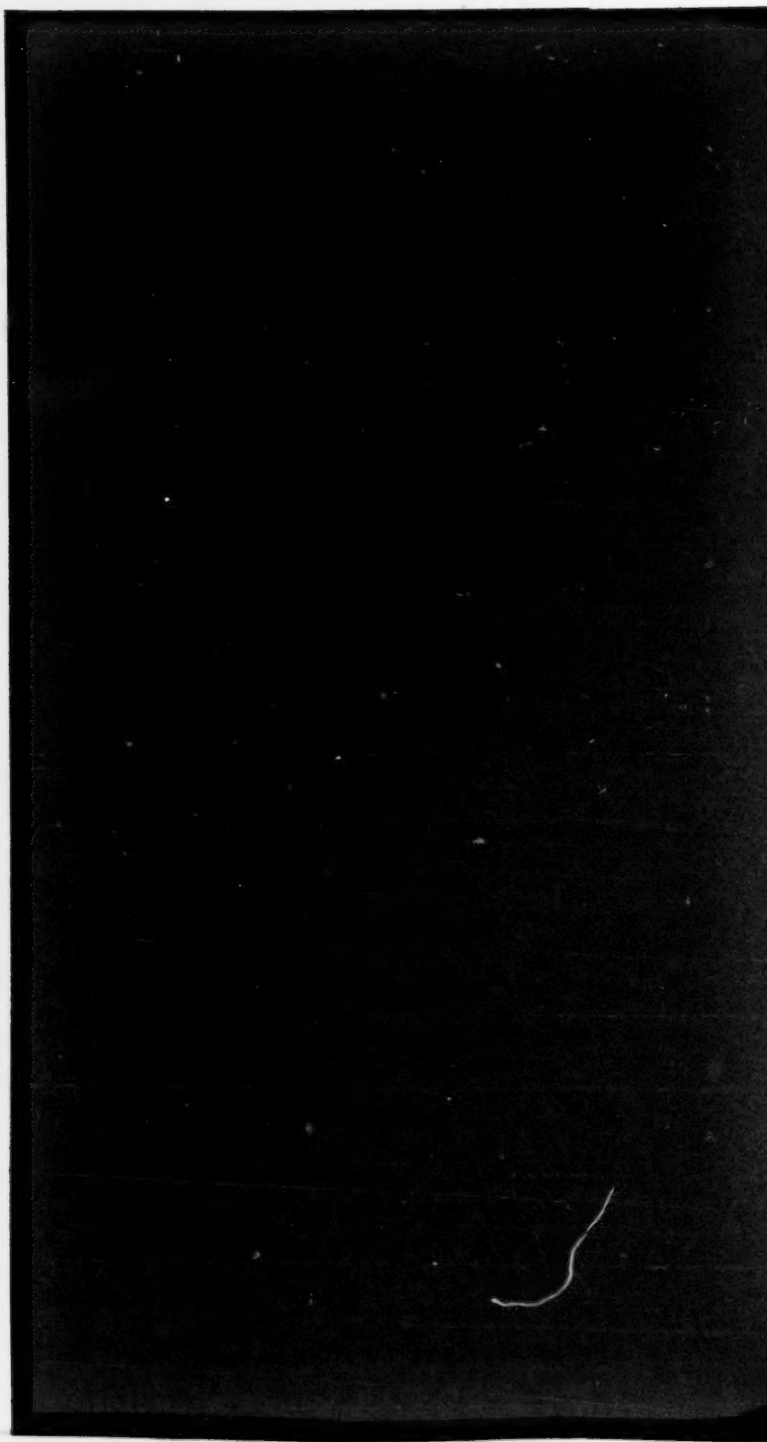
Supreme Court of the United States

LOUIS A. BROWN

CHARLES R. LARSEN, et al.

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

PERMANENT FOR CERTIORARI FILED  
CERTIORARI GRANTED JUNE 24, 1970



## APPENDIX

### Supreme Court of the United States

OCTOBER TERM, 1970

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No. 325

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LOUIS A. NEGRE,

*Petitioner.*

*v.*

STANLEY R. LARSEN, ET AL.,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 5, 1970

CERTIORARI GRANTED JUNE 29, 1970

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## RELEVANT DOCKET ENTRIES

50793 LOUIS A. NEGRE vs. STANLEY R. LARSEN et al.

## DATE

## PROCEEDINGS

1969

Feb. 14 Filed petn. for Writ of Habeas Corpus. SAW 243

26 Filed return to Order to show cause with pts. &amp; auths.

Mar. 5 Filed petnr's reply and traverse to resp's answer to petn. for writ of hav. corp. [sic]

13 Filed order denying petn. for writ of hab. corp., discharging the O.S.C. and dismissing the proceedings; the effect [sic] of this order is stayed 10 days from date to allow petnr. to seek fur. relief from Court of Appeals for the 9th Circ. (Zirpoli)

19 Filed petitioners' notice of motion and mo. for rehearing, new trial, ext. of stay pending decision and to amend judgment with supporting papers attached, Mar. 27, 69, 2:00 PM, before Judge Zirpoli.

27 Filed ord. denying rehearing and denying interlocutory relief and stay of ord. 10 days for pet. to seek fur. relief. (Zirpoli)

Apr. 2 Filed petitioners' notice of appeal.

Nov. 6 *Per curiam* decision affirming denial of petn. for writ of hab. corp.

1970

June 29 Order of Supreme Court granting petn. for writ of certiorari.



APPLICATION FOR REQUEST FOR DISCHARGE  
AS A CONSCIENTIOUS OBJECTOR  
UNDER AR 635-20

CO, USAPERSCEN (6020)

27 Jan 69

PVT LOUIS A. NEGRE

US 56 669 214

Request a discharge under the provisions of AR 635-20,  
based on religious beliefs.

1. General Information

- a. Louis Auguste Negre
- b. US 56 669 214
- c. 47-847-723
- d. USAOSRFLSTA, Oakland, California
- e. 501 Niles Street, Bakersfield, California
- f. St. Francis Catholic School  
grades 1-5  
Our Lady of Perpetual Help School  
grades 6-7  
Garces Roman Catholic High  
grade 8-12  
Bakersfield Junior College  
from Sep/65-Jun/67  
all the schools listed are in Bakersfield, California
- g. cook and bus boy at Maison Jaussand French Restaurant, 1001 S. Union Ave., Bakersfield, California, from Feb/64-induction
- h. 501 Niles Street, Bakersfield, California  
Jun/65-present  
515 Monterey Street, Bakersfield, California  
Jun/63-Jun/65  
1517 Baker Street, Bakersfield, California  
Jan/62-Jun/63  
3108 Linden Avenue, Bakersfield, California  
Jan/59-Jan/62  
2121 Palm Street, Bakersfield, California  
Aug/51-59



Nice, France  
Jul/47-Aug/51

- i. Father—Auguste Negre, 501 Niles Street, Bakersfield, California  
Mother—Martha Negre, 501 Niles Street, Bakersfield, California
- j. Both parents are Roman Catholic
- k. No.
- l. Not applicable, I have served over 180 days on active duty.
- m. I am willing to engage voluntarily in post-military work of the nature encompassed by the civilian work program administered by Selective Service.

## 2. Religious Training and Beliefs.

a. On February 26, 1968 I submitted an incomplete application for discharge as a conscientious objector to CPT Hill, an attorney at law, with the title and assignment of commanding officer of transient company at Oakland Army Terminal, California. SPT Hill entered upon extensive cross-examination of me about the application, ascertained that I would engage in force to protect my mother from attack, declared that my application was inconsistent and unacceptable and did hand the application back to me. CPT Hill stated that he would exercise every means within his power to cause me to board an airplane for Vietnam, stating that he meant both physical and other means.

I told CPT Hill that I would be obliged to refuse any order to debark for Vietnam to participate in any form in that war upon the ground that such participation would squarely violate my religious training and belief prohibiting such participation.

CPT Hill subsequently assigned men under his command to keep me in their company, in effect arresting me, and also stated to me that general court martial charges were to be brought against me for disobedience of orders.

I again advised CPT Hill that I filed my application for discharge as a conscientious objector, that I stood upon my religious training and belief whether he agreed to it or not, and that I would have to decline any participation in the war

in Vietnam upon the grounds of my religious training or belief, whatever action CPT Hill took.

Subsequently I was advised that court martial charges against me had been dropped, and that my application for discharge as a conscientious objector had been accepted for consideration. I was sent to a chaplain and a psychiatrist for interview. The psychiatrist stated to me during the interview that he accepted the sincerity of my claim as a conscientious objector.

The chaplain, a Methodist officer, found that I did object to becoming engaged in the military conflict in Vietnam, but did not find that my objection was based solely upon my religious training and belief, in view of the advice he had received from the Catholic chaplain regarding Catholic religious training and belief. Methodist chaplains understanding of Catholic training and belief subsequently proved to be erroneous. Because his report was not shown to me in February 1968, I was unable to correct the mistake at that time. Likewise, supporting letters attesting to my sincerity could be attached to my initial application because the officers at the Oakland Army Personnel Center kept me under escort, and did not allow me any time to obtain such letters from my religious adviser of my family and friends in Bakersfield.

Based upon the absence of supporting documentation establishing the nature of the Catholic religious training and belief, and based upon the mistaken statement by the Methodist chaplain of Catholic training and belief, an endorsement was attached to my initial application, repeating the erroneous characterization of Catholic training and belief and recommending disapproval of my first application.

Based upon the incomplete application and erroneous endorsements, the Department of the Army disapproved my initial application for separation stating:

"Application for separation disapproved since the evidence fails to meet criteria for separation. Request is not based upon sincere religious training and belief."

After filing the initial application, I did obtain official statement of the Catholic doctrine and creed in respect of military service, a letter from my religious adviser regarding the same, and letters from friends and family attesting to my sincerity.

Upon notice that the initial application had been denied, I therefore filed a second application about July 15, 1968, outlining a correct statement of the Catholic religious training and belief, and enclosing extensive evidence of sincerity.

The Commanding Officer of the Oakland Army Personnel Center determined that the second application was substantially the same as the first application, and refused to accept the second application. I advised the Commanding Officer of Transient Company that I would be obliged by my religious training and belief to refuse any orders to proceed to Vietnam to participate in the war there. The Commanding Officer said that I could not refuse an order in advance, and I would have to wait until I received the order to ship before I could refuse the order.

Declined the order upon the grounds that compliance was promatted by my conscience formed by my religious training and belief.

General court martial proceedings were held upon the charge of wilful disobedience of the order to proceed to Vietnam, and I was found not guilty of the charge.

The Methodist chaplain stated that he had not studied Catholic teaching in respect of conscientious objection and had relied upon advice from the Catholic chaplain. The Catholic chaplain subsequently testified that his colleague had mistakenly summarized the Catholic training and belief.

Chaplain (LTC) Richard, the Catholic chaplain, testified that the Catholic religion compels its members to refuse, object to or seek release from military service where such service violates the conscience of the individual Catholic. Each Catholic must form his own conscience in respect of military service. Thus, one Catholic may serve in good conscience, while another Catholic will find that his conscience prohibits military service. Under Catholic religious training and belief, each Catholic has a duty to follow his own conscience in respect of military service.

Following my acquittal at the general court martial proceedings, I renewed my application as a conscientious objector upon the grounds stated in this application. During the pendency of the court martial proceedings, the Catholic bishops of the United States including Archbishop Terence Cooke, bishop to Catholics in the US Armed Forces. They

issued a pastoral letter entitled "Human Life in our Day" on November 15, 1968, after their conference in Washington, D.C. The bishops' pastoral letter explicitly reaffirmed the Catholic doctrine of duty to conscience:

"As witness to a spiritual tradition which accepts enlightened conscience even when honestly mistaken, as the immediate arbiter of moral decisions, we can only feel reassured by this evidence of individual responsibility and the decline of uncritical conformism."

If war is ever to be outlawed, and replaced by more humane and enlightened institutions to regulate conflicts among nations, institutions rooted in the notion of universal common good, it will be because the citizens of this land and other nations have rejected the tenets of exaggerated nationalism and insisted on principles of non-violent political and civic action in both the domestic and international spheres.

We therefore join with the Council Fathers in praising "those who renounce the use of violence in the vindication of their rights and who resort to methods of defense which are otherwise available to weaker parties, provided that this can be done without injury to the rights and duties of others or of the community itself"

The bishops then call for liberalizing the laws recognizing conscientious objectors and concludes:

"Whether or not such modifications in our laws are in fact made, we continue to hope that, in the all-important issues of war and peace, all men will continue to follow their consciences. We can do no better than to recall, as did the Vatican Council, 'the permanent binding force or universal natural law and its all embracing principles,' to which 'man's conscience itself gives ever more emphatic voice.'"

The U.S. bishops pastoral letter is merely the latest reaffirmation in the long history of Catholic religious training and belief affirming that the duty to God is higher than the duty to man, and therefore that man must obey his conscience and refuse and refuse any command of the state to violate his conscience.

# 1. "Do good and avoid evil"

1. From the Act of Contrition: ". . . and I firmly resolve which are customarily an inducement to sin so that all such

with the help of your grace, to sin no more, and to avoid the near occasion of sin."

2. Vatican II, "Dogmatic Constitution on the Church," ch. IV, par. 36: "Moreover, let the laity by their combined efforts remedy any institutions and conditions of the world things may be conformed to the norms of justice and may favor the practice of virtue rather than hinder it."

## 2. Conscience

1. Vatican II, "Declaration on Religious Freedom," ch. I, par. 3: "On his part, man perceives and acknowledges the imperatives of the divine law through the mediation of the conscience faithfully, in order that he may come to God, for whom he was created.

2. Vatican II, "Pastoral Constitution of the Church in the Modern World," Part I, ch. 1 par. 16: "In the depths of his conscience, man detects a law which he does not impose upon himself, but which holds him to obedience. Always summoning him to love good and avoid evil, the voice of conscience can when necessary speak to his heart more specifically: do this, shun that. For man has in his heart a law written by God. To obey it is the very divinity of man; according to it he will be judged."

## 3. Revelation

1. "You shall not kill." (Exodus, 20:23)

2. "Blessed are the meek, for they shall inherit the earth." (Math. 5:4)

3. "You have heard that it has been said: an eye for an eye and a tooth for a tooth. But I say to you not to resist evil: but if one strike thee on the right cheek, turn to him also the other. And if a man will contend with thee . . . in judgment, and take away thy coat, let go thy cloak also unto him. And whosoever will force thee one mile go with him other two." (Math. 5:38-41)

4. "You have heard that it hath been said, thou shalt love thy neighbor and hate thy enemy. But I say to you, Love your enemies, do good to them that persecute and calumniate you." (Math. 5:43-4)

5. "These things I command you, that you love one another." (John, 15:17)

6. "Then Jesus said to him (Peter): Put up again they

sword into its place, for all that take the sword shall perish with the sword." (Math. 22:52)

7. "Thou shalt love thy neighbor as thyself." (Math. 22:39)

8. "Amen I say to you, as long as you did it to one of these my least brethren you did it to me." (Math. 25:40)

#### 4. Some contemporary Catholic Statements on War

1. John XXIII: "Therefore, in this age of ours which prides itself on its atomic power, it is irrational to believe that war is still an apt means of vindicating violated rights."

2. Paul VI before United Nations: "If you wish to be brother, let the weapons fall from your hands . . . No more war. War never again."

3. Cardinal Ottaviani: ". . . today it is impossible in waging war to fulfill the conditions which in theory make war lawful and just. Nowhere can there be a cause proportionate or of such importance as to justify so much evil, slaughter and destruction, and moral and religious ruin. In practice then, it will never again be lawful to declare war."

4. American Bishops, Nov. 1968: "The threats of life depend on urgent and difficult decisions concerning war and peace. In considering these we share the convictions of Vatican Council II that the horror and perversity of technological warfare 'compel us to undertake an evaluation of war with an entirely new attitude.'"

#### 5. The Catholic Church and Conscientious Objection

1. Vatican II, "The Church Today," par. 79: "Moreover, it seems right that laws make humane provisions for the case of those who for reasons of conscience refuse to bear arms, provided, however, that they accept some other form of service to the human community."

2. American Bishops, Nov. 1968: They question the morality of modern warfare and they praise those who object for reasons of conscience. They also show how this objection can be founded on the teachings of Christ and the teachings of the Roman Catholic Church, interpreting Christ's message.

"Nor can it be said that such conscientious objection to war, as war is waged in our times, is entirely the result of subjective consideration and without reference to the mes-

sage of the Gospel and the teaching of the Church; quite the contrary, frequently conscientious dissent reflects the influence of the principles which inform modern papal tradition of moral doctrine in the Church, including, in fact, the norms for the moral evaluation of a theoretically just war."

Then the document goes on to praise the efforts to sincere people and reaffirms the right for conscientious objectors. activity and its consciences less inhuman. Such are conventions concerning the handling of wounded or captured soldiers, and various similar agreements. Agreements of this sort must be honored. Indeed they should be improved upon so that they can better and more workably lead to restraining the frightfulness of war.

"All men, especially government officials and experts in these matters, are bound to do everything they can to effect these improvements. Moreover, it seems right that laws make humane provisions for the case of those who for reasons of conscience to bear arms, provided however, that they accept some other form of service to the human community.

"But it is one thing to undertake military action for the just defense of the people, and something else again to seek the subjugation of other nations. Nor does the possession of war potential make every military or political use of it lawful. Neither does the mere fact that war has unhappily begun (sic) mean that all is fair between the warring parties." (Sec. 79)

"80. The horror and perversity of war are immensely magnified by the multiplication of scientific weapons. For acts of war involving these weapons can inflict massive and indiscriminate destruction far exceeding the bounds of legitimate defense. Indeed, if the kind of instruments which can now be found in the armories of the great nations were to be employed to their fullest, an almost total and altogether reciprocal slaughter of each side by the other would follow, not to mention the widespread devastation which would take place in the world and the deadly aftereffects would be spawned by the use of such weapons.

"All these considerations compel us to undertake an evaluation of war with an entirely new attitude. The men of our time must realize that they will have to give a somber reckoning for their deeds of war. For the course of the future will depend largely on the decision they make today.



"With these truths in mind, this most holy Synod makes its own the condemnations of total war already pronounced by recent Popes, and issues the following declaration:

"Any act of war aimed indiscriminately at the destruction of entire cities or of extensive areas along with their population is a crime against God and man himself. It merits unequivocal and unhesitating condemnation.

"The unique hazard of modern warfare consists in this: it provides those who possess modern scientific weapons with a kind of occasion for perpetrating just such abominations. Moreover, through a certain inexorable chain of events, it can urge men on to the most atrocious decisions. That such in fact may never happen in the future, the bishops of the whole world, in unity assembled, beg all men, especially government officials and military leaders, to give unremitting thought to the awesome responsibility which is theirs before God and the entire human race." (See 80)

"In the depths of his conscience, man detects a law which he does not impose upon himself, but which holds him to obedience. Always summoning him to love good and avoid evil, the voice of conscience when necessary speaks to his heart: do this, shun that. For man has in his heart a law written by God; to obey it is the will and dignity of man; according to it he will be judged. Conscience is the most secret core and sanctuary of man. There he is alone with God, whose voice echoes in his depths. In a wonderful manner conscience reveals that law which is fulfilled by love of God and neighbor." (See 16)

". . . the Council wishes to recall first of all the permanent binding force of universal moral law and its all embracing principles as man's conscience itself gives even more emphatic voice to these principles. Therefore, actions which deliberately conflict with these same principles as well as orders commanding such actions, are criminal. Blind obedience cannot excuse those who yield to them." See 79

The foregoing pronouncements were made by His Holiness, Pope Paul VI after consultation with the Fathers of the Sacred Council, and announced on December 7, 1965.

Pope John XXIII: "Since the right to command is required by the moral order and has its source in God, it fol-



lows that, if civil authorities legislate for or allow anything that is contrary to that order and therefore contrary to the will of God, neither the laws made nor the unauthorizations granted can be binding on the consciences of the citizens of US, since God has more right to be obeyed than men." (Pacem in Terris, page 142a, April 11, 1963)

In my 12 years in a Roman Catholic School at St. Francis Elementary School, Our Lady of Perpetual Help Junior High School, and Garces High School in Bakersfield, California, I have always been taught and I firmly believe that teaching of the Popes of the Church in matters of religious faith and morals is binding upon all Catholics, clergy or laity, military or civilian. For myself, I accept the teaching of his Holiness Pope Paul VI as announced in the Pastoral Constitution as binding upon my conscience, in conformity to my religious training and belief. I likewise accept the teaching of Pope John XXIII.

6. I likewise accept as part of my religious training and belief the Catholic teaching that I must examine and form my conscience based upon the best information I can gather; that I cannot be willing to commit evil by acting with a doubtful conscience, merely hoping that my conduct is not contrary to conscience. Equally, I accept my religious training and belief that where my conscience is certain, I must obey the order of conscience.

7. My conscience is not without information about the war in Vietnam. In fact my information actually relates back to the time of my childhood. In 1952 my family moved from France to the United States in search of freedom and peace. It was at the time that France was engaging in conflict with Indo-China, the present-day Vietnam.

It was in the hope of saving me from such an atrocity that we left France and re-established our home in the United States. I have been living in this country ever since 1952. I attended Catholic grammar school and high school, learning and practicing the laws set down by Our Lord Jesus Christ.

All through my life I was never in trouble with law. I have also felt and still do that violence will never solve anything. Violence will only prove one point and that is that one side or party is stronger than the other in this material life. Nevertheless the fact concerning one's ideals would not be changed by force, only by reason.

I believe that each individual on this earth was created to the image and likeness of God, regardless of race or creed. Each individual has his own convictions on living and pleasing God. None of us living have the true authority on convicting someone to our standards of our society. Also, because an individual has different customs and beliefs than us, who are we as a nation to decide that what they are doing is wrong and we must change their beliefs to suit ourselves.

In pertaining to the war in Vietnam the North Vietnamese people are fighting for their fundamental beliefs which they were brought up to believe. According to our standards they are wrong in their action, but in reality who is to say which nation is right in their beliefs before God. Sure we can say we are right and they are wrong, but one cannot forget that they too are human beings as ourselves and have the right to form opinions and make decisions as we are capable of doing. Now if they are wrong in their actions, surely they will pay, if not in this life in the world to come, for their misdeeds, just as we will if we are wrong.

The fact still remains that we have no authority to condemn them in their actions or pressure them by fighting and killing them. As I stated before, war is no answer to peace. War only solves the point of which country is stronger. Despite the amount of force used on an individual, his basic beliefs will always remain, just as long as he has an ounce of breath in him and he really believes it without doubt.

I was inducted in the Army of the United States of America at the Fresno induction center on August 29, 1967. At that time I had my own convictions about the war in Vietnam. And the Army's goal. Nevertheless I agreed to myself that before making any decision or taking any type of stand on the issue I would permit myself to see and understand the Army's explanation of its reasons for violence in Vietnam. For, without getting an insight on the subject, it would be unfair for me to say anything, without really knowing the answer.

I completed my basic training at Fort Lewis, Washington, in Company E-2. From there I was sent to Fort Polk, Louisiana, for advanced infantry training. It was there, upon completion of that training, that I knew that if I would permit myself to go to Vietnam I would be violating my own concepts of natural law and would be going against all that

I had been taught in my religious training. To contribute to the war in Vietnam would be in contravention of my own conscience and my moral beliefs. For one must not forget the purpose for which we as men were put on earth. That purpose was to please God, our Creator, for at the end of the world one is unable to bring with him the material things which he has accumulated while on earth. It is on that day that judgment will be passed on every man on the manner he served God and followed his conscience, given by God.

I cannot personally believe that by being in Vietnam we are helping the people there as we say. Have you ever stopped to think all the harm we have brought to that country? We, as being there, are not only destroying their homes, but also are taking the lives of people who were brought up on the very soil who are fighting to preserve their beliefs. We are depriving the individual of the right to live, if we feel he or she is a threat to a village. In Vietnam the individual soldier has the power to kill anyone whom he thinks is wrong.

Such power should not be distributed to one's will for only God has the right to take the life of an individual. If we are in Vietnam to help them why are we denying and persecuting the people who have different beliefs than we do. That is exactly what we are doing there today, murdering and slaughtering human beings like ourselves for the mere fact that an individual does not see the same things you see. Could anyone in his right mind kill his brother over a disagreement in principles or beliefs? Yet all of us on earth are brothers all striving to serve God the best way we can, despite which course is taken. For as you well know there are various different routes to be taken to arrive at a certain destination.

7. For the past six months, I worked as a clerk in Co. C. SPD and during the time before that I worked at the Hospital, Fort Ord, California. I have done my best to do a conscientious job and have done my best to be promoted from private to private first class.

After giving the deepest respect to the teaching and statements of my superiors in the Army, I nevertheless am obliged to follow my conscience: I am obliged by my conscience, under my religious training and beliefs, to refuse participation in any form in the war in Vietnam. Whether

or not I am subjected to threats, pressure or coercion in any form, or punishment, my conduct must be the same. I cannot act in violation of my conscience. If the Department of the Army says that I am insincere, I am sorry that I cannot persuade them of my sincerity, and I nevertheless may not act in violation of my religious training and belief, and my conscience.

My decision will not be different no matter how many sets of orders are printed or given to me without notice, or how many times the name or number of the company to which I may be assigned is changed.

Likewise, I must follow my religious training and belief whether or not they meet the test fixed by the laws of the United States for conscientious objection, for the duty we owe to God, to serve God and please God, is higher than the duty we owe to any man or any nation.

My family came to America in search of peace, and in search of freedom of conscience. I believe that the American law and constitution do allow freedom of religion and of conscience.

In respect of non-combatant duty in the Army I must say in honesty that my duty in the Fort Ord Hospital has not appeared to me to constitute a direct participation in the war in Vietnam. Equally however, honesty requires me to say that I would refuse duty as a clerk or medical corpsman in Vietnam as I would refuse infantry combat duty in Vietnam. The medical corpsman in Vietnam restores the combat soldiers to combat if they are sick or wounded. I believe that most of the men injured in Vietnam received very quick treatment and immediately return to combat. Restoring combat soldiers to condition to engage in the very killing which my religious training and belief prohibits cannot in any way satisfy the dictates of conscience.

I recognize that paying taxes or performing any service or work in the United States contributes in a way to the killing in Vietnam. But such service or work in the United States also contributes to the proper aims of supporting peaceful American life. After careful thought I believe that work such as that in the Hospital Company at Fort Ord is not so different from ordinary employment in the United States or alternative civilian service as to be prohibited by conscience, because such service in the Army in the United

States is only remotely connected with the killing and injury inflicted in Vietnam.

Therefore, while I cannot in conscience accept or perform any service in Vietnam because it would directly assist, I would be prepared to perform noncombatant hospital service in the United States because such service is not directly in aid of the Army forces in Vietnam.

Assignment to medical corpsman or like "non-combatant" duty in Vietnam I would be obliged to refuse upon the grounds of religious training and belief.

8. I have attached as enclosures letters regarding my religious training and belief from any family and religious advisers.

For the reasons stated I request that I be classified as a conscientious objector on the grounds of religious training and belief, and either discharged or granted bona fide non-combatant assignment in the United States which is not in direct support of the killing and injury in Vietnam.

At present I feel that I could not conceive participation in any war.

10 Incl

Louis Negre, PVT, US 56 669 214

1. Excerpts from Austin Fagothey, S.J., *Right and Reason, Ethics in Theory and Practice*, 1967.

2. Letter from James E. Straukamp, S.J.

3. Letter from Alice Chanley.

4. Letter from Maison Jaussaud.

5. Letter from John E. Cottalorda.

6. Letter from Mrs. Marcelle Johnson.

7. Letter from Auguste Negre and Martha Negre.

8. Letter from Cpt Daniel G. Harris.

9. Letter from SP 4 Robert R. Land.

10. Booklet.

AUSTIN FAGOTHEY, S.J., Professor of Philosophy, Univ. of Santa Clara, Santa Clara, California. *Right and Reason, Ethics in Theory and Practice*, 1957.

Imprimatur: Joseph T. McGuchter, STD, Archbishop of San Francisco, October 25, 1966.

in this life. Scrupulosity can be a serious form of spiritual self-torture, mounting to neurotic anxiety, that is more of a psychological than an ethical condition. The person needs to learn, not the distinction between right and wrong, which he may know very well, but how to stop worrying over groundless fears, how to end his ceaseless self-examination and face life in a more confident spirit.

Having seen what conscience is and the main forms it takes, we must now discuss our responsibility in following what conscience approves or disapproves. There are two chief rules, each of which involves a problem:

- (1) Always obey a certain conscience.
- (2) Never act with a doubtful conscience.

#### ALWAYS OBEY A CERTAIN CONSCIENCE

Notice the difference in meaning between a certain and a correct conscience. The term *correct* describes the objective truth of the person's judgment, that his conscience represents the real state of things. The term *certain* describes the subjective state of the person judging, how firmly he holds to his assent, how thoroughly he has excluded fear of the opposite. The kind of certitude meant here is a subjective certitude, which can exist along with objective error. Hence there are two possibilities:

- (1) A certain and correct conscience
- (2) A certain but erroneous conscience

1. A *certain and correct conscience* offers no difficulty and our obligation is clear. The person judges what conduct is required of him here and now. His judgment is correct and he is certain of its correctness.

What degree of certitude is required? It is sufficient that the conscience be *prudentially certain*. Prudential certitude is not absolute but relative. It excludes all *prudent* fear that

the opposite may be true, but it does not rule out imprudent fears based on bare possibilities. The reasons are strong enough to satisfy a normally prudent man in an important matter, so that he feels safe in practice though there is a theoretical chance of his being wrong. He has taken every reasonable precaution, but cannot guarantee against rare contingencies and freaks of nature.

In moral matters strict mathematical certitude (metaphysical certitude, the opposite of which is a contradiction) or even the certitude of physical events (physical certitude, the opposite of which would be a miracle) is not to be expected. When there is question of action, of something to be done here and now, but often involving future consequences some of which are dependent on the wills of other people, the absolute possibility of error cannot be wholly excluded; but it can be so reduced that no prudent man, no one free from neurotic whimsies, would be deterred from acting through fear of it. Thus a prudent man, having investigated the case, can say that he is *certain* that this business venture is safe, that this criminal is guilty, that this employee is honest. Prudential certitude, since it excludes all reasonable fear of error, is much more than high probability, which does not exclude such reasonable fear. One may, of course, define certitude so strictly as to make it mean absolute certitude only; but such a one is quarreling over mere words and must find another term to indicate what we have been describing in common language.

2. What happens when one has an *erroneous conscience*? Of course, if the error is *vincible*, it must be corrected. The person knows that he may be wrong, is able to correct the possible error, and is obliged to do so before acting. But a *vincibly erroneous conscience* cannot be a *certain conscience*. This is seen by asking how any conscience can become *vincibly erroneous*. A man may merely have a probable opinion which he neglects to verify, though able to do so. Or he may once have judged certainly yet erroneously, and now begins to doubt whether his judgment was correct or not. As long as he did not realize his error, his conscience was *invincibly erroneous*; the error has become *vincible* only because he is no longer subjectively certain and has begun to doubt. A *vincibly erroneous conscience* is therefore a name for a conscience that was either doubtful from



the beginning or else was once subjectively certain but erroneous, and has now become a doubtful conscience. It will be handled under the discussion of doubtful conscience.

If the error is *invincible*, we seem to have a dilemma. On the one hand, it does not seem right that person should be obliged to follow an erroneous judgment; on the other hand, he does not know that he is in error and has no means of correcting it. We solve the apparent dilemma by remembering that conscience is a subjective guide to conduct, that invincible error and ignorance are unavoidable, that any wrong which occurs is not done voluntarily and hence is not chargeable to the agent. A person acting with an invincibly erroneous conscience may do something that is objectively wrong, but since he does not recognize it as such, it is not subjectively wrong. The person is free of moral responsibility by the invincible ignorance bound up in his error.

Hence a certain conscience must be obeyed, not only when it is correct, but even when it is invincibly erroneous. Conscience is the only guide a man has for the performance of concrete actions here and now. But an invincibly erroneous conscience cannot be distinguished from a correct conscience. Therefore if one were not obliged to follow a certain but invincibly erroneous conscience, we should be forced to the absurd conclusion that one would not be obliged to followed a certain and correct conscience.

The will depends on the intellect to present the good to it. Whether the intellect's judgment is correct or not, the will act is good if it consents to the good presented by the intellect and it is bad if it consents to what the intellect judges evil. If a man is firmly convinced that his action is right, he is choosing the good as far as he can; if he is firmly convinced that his action is wrong, he is choosing what he thinks to be evil, whether it really is so or not. He is not responsible for the error, but he is for his choice.

### NEVER ACT WITH A DOUBTFUL CONSCIENCE

The man who is acting with a certain but invincibly erroneous conscience is avoiding moral evil as far as he can. It is not his fault that his judgment is mistaken and he has no reason for believing that it is mistaken. But the same cannot be said of one who acts with a *doubtful* conscience.



He has reason for believing that his intended act may be wrong, yet he is willing to go ahead and perform it anyway. True, he is not certain that he will do wrong. The man has no care for right or wrong, and if his act turns out to be objectively right this is only accidental. Therefore one must never act with a doubtful conscience.

What, then, should a person with a doubtful conscience do? His first obligation is to try to solve the doubt. He must reason over the matter to see if he cannot arrive at a certain conclusion. He must inquire and seek advice, even of experts if the matter is important enough. He must investigate the facts in the problem and make certain of them, if possible. He must use all the means that normally prudent people are accustomed to use, in proportion to the importance of the problem. Before deciding on an important course of action, business and professional men take a great deal of trouble to investigate a case, to secure all the data, to seek expert advice, besides thinking over the matter carefully themselves. The same seriousness is demanded in moral affairs.

What is the doubt cannot be solved? It may happen that the required information cannot be obtained because the facts are not recorded or the records are lost or the law remains obscure or the opinions of the learned differ or the matter does not admit of delay for further research. If one should never act with a doubtful conscience, what can one in doubt do? It may seem that the answer is easy: do nothing. But often this will not help, for omissions can be voluntary and the doubt may concern precisely the question whether we are allowed to refrain from acting in this case.

The answer to the difficulty is that every doubtful conscience can in actual practice be turned into a certain conscience, that no one need ever remain in doubt about what he must do. If the *direct method* of inquiry and investigation described has been used and proved fruitless, we then have recourse to the *indirect method* of forming our conscience by the use of reflex principles. Note that we are not offered a choice between either the direct or the indirect method. We *must* use the direct method *first*. Only when the direct method yields no result may we go on to the indirect method.

### FORMING ONE'S CONSCIENCE

The doubting person who has exhausted the direct method

without getting the knowledge has really a double doubt:

(1) What is the actual truth on the matter in hand?

(2) What is one obliged to do in such a situation?

The first is the *theoretical* or *speculative* doubt, and this is the question that cannot be answered, because the direct method was used and failed to yield results. The second is the *practical* or *operative* doubt, and this alone we claim can be solved in every instance.

Though many doubts are invincible theoretically, every doubt is vincible practically. A person can become certain of what he is obliged to do, how he is expected to act, what conduct is required of him, while remaining in a state of unsolved theoretical doubt. Thus, though the rightness or wrongness of the action is not settled in the abstract, this man becomes certain of what he in these actual circumstances is obliged or allowed to do, and therefore he acts with a certain conscience. In other words, he finds out the kind of conduct that is *certainly* lawful for a *doubting* person. This process of solving a practical doubt without touching the theoretical doubt is called *forming one's conscience*.

## REFLEX PRINCIPLES

The process of forming one's conscience is accomplished by the use of *reflex principles*, so called because the mind uses them while reflecting on the state of doubt and ignorance in which it now finds itself. Two such principles are of application here:

(1) Take the morally safer course.

(2) A doubtful law does not bind.

## THE MORALLY SAFER COURSE

By the *morally safer* course we mean the one which more surely preserves moral goodness, more certainly avoids wrongdoing. Often it is physically more dangerous. Sometimes neither alternative appears morally safer, but the obligation on each side seems equal; then we may do either.

One is always *allowed* to choose the morally safer course. If a man is certainly not obliged to act but doubts whether or not he is allowed to act, the morally safer course is to omit the act; thus if I doubt whether this money is justly

mine, I can simply refuse it. If a man is certainly allowed to act but doubts whether or not he is obliged to act, the morally safer course is to do the act; thus if I doubt whether I have paid a bill, I can offer the money and risk paying it twice.

Sometimes we are *obliged* to follow the morally safer course. We must do so when there is an end certainly to be obtained to the best of our power, and our doubt merely concerns the effectiveness of the means to be used for this purpose. Here the undoubted obligation to attain the end implies the obligation to use certainly effective means. A doctor may not use a doubtful remedy on his patient when he has a sure one at hand. A lawyer may not choose to defend his client with weak arguments when he has strong ones to present. A hunter may not fire into the bushes if he doubts whether the moving object is a man or an animal. A merchant may not pay a certainly existing debt with probably counterfeit coin or advertise probably damaged articles as first class goods. In such cases the person's obligation is certain and he must use means that will certainly fulfill it.

But there are other cases in which the obligation itself is the thing in doubt. Here we have a very different question. The morally safer course, though always allowable, is often costly and inconvenient, sometimes heroic. Out of a desire to do the better thing we often follow it without question, but, if we were obliged to follow it in *all* cases of doubt, life would become intolerably difficult. To be safe morally, we should have to yield every doubtful claim to others who have no better right, and thus become victims of every sharper and swindler whose conscience is less delicate than ours. Such difficulties are avoided by the use of the second reflex principle a doubtful law does not bind.

## A DOUBTFUL LAW

The principle, *a doubtful law does not bind*, is applicable only when I doubt whether or not I am bound by an obligation, when my doubt of conscience concerns the *lawfulness or unlawfulness* of an act to be done. It applies to the moral law as well as to human laws. I may use this principle in both the following situations:

- (1) I doubt whether such a law exists.
- (2) I doubt whether the law applies to my case.

For example: I may doubt whether the game laws forbid me to shoot deer on my farm, whether the fruit on my neighbor's tree hanging over my fence belongs to him or to me, whether I am sick enough to be excused from going to work today, whether the damage I caused was purely accidental or due to my own carelessness. It is true that there are contained here questions of fact that cannot be settled, but they all bring up questions of lawfulness or permissibility of action: Am I allowed to shoot the deer, to pick the fruit, to stay home from work, to refuse to repair the damage? Does any law exist, applicable to my case, which certainly forbids me? If the direct method fails to prove any, then I am morally justified in doing these things on the principle that a *doubtful law does not bind*.

The reason behind this principle is that promulgation is of the essence of law, and a doubtful law is not sufficiently promulgated, for it is not sufficiently made known to the person about to act here and now. Law imposes obligation, which is usually burdensome, and he who would impose an obligation or restrict the liberty of another must prove his right to do so. A man is presumed free until it becomes certain that he is restrained, and therefore a doubtfully existing restraint or law loses its binding force.

Be careful to distinguish these cases from those which fall under the other principle. If the obligation itself is the thing in doubt, I am not obliged. If the obligation is certain and only the means of carrying it out are doubtful, I may not use doubtful means if certain ones are available. I may not roll boulders down a hill in the mere hope that they may not hit anyone on the road below, but I may cart off boulders from property that is only probably mine. I may not leave poisoned feed about on the chance that no one will care to eat it, but I may manufacture clearly labeled poison if such manufacture is only probably forbidden by law. In the first instances there is no doubt about the law: I am not allowed unnecessarily to jeopardize human life. It may happen that no harm results, but the acts are certainly dangerous and *the morally safer course must be chosen*. In the second instances the law itself of not seizing others' property or of not manufacturing certain products is of doubtful application to my case, and I may take advantage of the doubt in my favor, for a *doubtful law does not bind*.

How doubtful does the law have to be to lose its binding force? Must the existence or application of the law be more doubtful than its nonexistence or nonapplication of the law be more doubtful than its nonexistence or nonapplication, or equally so, or will any doubt suffice to exempt one from the obligation? Such questions were hotly debated during the seventeenth and eighteenth centuries, more by moral theologians than by philosophical ethicists. The view that survived as the most tenable in theory and the only one workable in practice is called *probabilism*. It does not require a weighing of probabilities on either side of the case, but merely requires that be *solidly probable* that a law does not exist or does not apply to my case for me to be free from its obligation. Solid probability means that the reasons against the law's existence or application are not frivolous or fictitious but valid and weighty, even though they may not be more so than the reasons in favor of the law. No proposition can be certain if there are valid and weighty reasons against it. If it is not certain it is doubtful, and if it is doubtful it does bind. To list all the reasons on both sides and weigh their relative merits is often a hopeless task, baffling the best experts. The average man has neither time nor knowledge nor ability for such a comparison. In practice decisions must be made promptly, and yet be made with a certain conscience. The theory of probabilism enables one to do so.

## CONCLUSION

The whole matter of forming one's conscience may seem to involve a great deal of subtlety, as if we were whittling down moral obligation to its lowest terms. Is this not contrary to straightforward simplicity and sincerity? In answer, the first thing to note is that one can always follow the morally safer course. But in ethics we are studying not only what is the better, nobler, and more heroic thing to do, but also exactly what a man is strictly obliged to do. A generous man will not haggle over good works, but an enlightened man will want to know when he is doing a strict duty and when he is being generous.

Accurate moral discrimination is particularly necessary in judging the conduct of others. In our personal lives we may be willing to waive our strict rights and to go beyond

the call of duty, but we have no business imposing on others an obligation to do so. The borderline between right and wrong is difficult to determine. It is foolish to skirt it too closely, but we are not allowed to accuse another man of wrongdoing if he has not done wrong. This is why we were obliged to detail these principles so carefully.

It seems that civil rights demonstrations, to be morally acceptable, must be:

- (1) For the common good and not for special privilege
- (2) For natural rights and personal dignity
- (3) For civil rights granted but not implemented
- (4) Only after legal channels have proved fruitless
- (5) Conducted in a peaceful and orderly manner
- (6) By mature, concerned, and responsible people
- (7) Under competent leadership able to restrain excesses
- (8) With proportionate means and minimum disturbance
- (9) For the betterment of society, not its disruption

It is the business of each government to guarantee in practice to its minorities, racial or other, the rights that are due them in social justice and in respect for their human dignity, so that there will be no further need for civil rights demonstrations. On the other hand, minorities should not get the idea that everything should be done for them independently of their own effort. What they have a right to is equal and undiscriminated facilities and opportunities, but the use of them is their own responsibility. Here we have a difficult problem in minority leadership.

## REBELLION AND REVOLUTION

Rebellion is open, organized, and armed resistance to constituted authority. Revolt, insurrection, and sedition are more localized forms of the same thing. There will always be malcontents and disaffected groups even in the best of human societies. For the common good a government must try to keep them contented, which it can best do by scrupulous regard for minority rights, but no authority can allow itself to be openly defied. Since the state has the right to exist, it also has the right to put down rebellion by all efficient and legitimate means.

What if rebellion is provoked by abuse of power on the

part of the ruler? Abuse of power does by itself take away the right to power. A father unjustly punishing his son does not lose his paternal right, nor does a man putting his money to unjust use lose the ownership of it. Small abuses of power are occurring constantly and serious ones occasionally in every state, because rulers are only human and fallible. Such causes cannot justify rebellion, though they call for protest and redress.

What may a private citizen do when he is unjustly oppressed? Unjust laws are not at all and can impose no moral obligation. Injustice in a law must not lightly be presumed but clearly established.

1. Passive resistance or nonobedience is required if the citizen is ordered to do something intrinsically wrong, for no human law can cancel the already existing obligation of the natural law. A so-called law which is unjust but does not order the doing of something intrinsically wrong may be resisted or obeyed, as the subject thinks expedient. It is wrong to do injustice but not to suffer injustice. To prevent greater evils one may have an incidental obligation to obey. But one must never do an act that is intrinsically wrong, no matter what the penalty.

2. Active resistance without physical force, by petitions, speeches, protests, books, pamphlets, editorials, and propaganda of all sorts, is always morally allowed against unjust laws and tyrannical rulers. But it is characteristic of tyrants to deny any opportunity for such peaceful methods.

3. Active resistance with physical force is allowed against a tyrant attempting to inflict grave personal injury, for the ruler in this case becomes an unjust aggressor. Such resistance may be extremely inexpedient, but it is not morally wrong. The rules of a blameless self-defense must be observed. If some citizens are unjustly attacked by a tyrannical ruler, others may come to their assistance against him.

Despite occasional injustice, it is wrong to stir up and wage civil war against a *rightful* ruler, that is, one who retains his right to rule. The right referred to here is not so much legal right as moral right. He may observe all legal and technical formalities and yet be a tyrant. Moral right means that he has not acted in such a way as to forfeit the office that still belongs to him in justice. If he is the rightful ruler, no one may rightfully depose him.



How can a ruler lose his right to rule? There are two ways. First, abuse of power may destroy the title on which the right is held. If the ruler took office bound by certain conditions and breaks his side of the contract, the people are not bound to theirs; in feudal times subjects were released from their oath of allegiance, and modern republics have the machinery of impeachment. Second, no matter how absolute a ruler may be or how legitimate his title to office, he always loses his moral right to rule by certain, continued, and excessive tyranny. In this case rebellion against him becomes a justified revolution.

Revolution is a fundamental change in political organization or in a government or constitution: the overthrow or renunciation of one government or ruler and the substitution of another by the governed. Rebellion cannot be allowed unless it is the means for accomplishing a justified revolution. In a revolution a new kind of government may be established, or the same type may be retained with new personnel. The theory behind a justified revolution is that the ruler lost his right to rule by his tyrannical behavior, and that sovereignty reverts to the people in whom it always dwells basically anyway (according to the theory of Bellarmine and Suarez). Consequently, it is not directed against a rightful ruler, since he has lost his right, nor is it by private authority, but by the public authority of the whole people civilly united.

The following conditions for a justified revolution are set down not as absolute requirements, for historical contingencies are too diverse, but as useful norms:

1. The government has become habitually tyrannical and works for its own selfish aims to the harm of the people, with no prospect of a change for the better within a reasonable time.



The University of San Francisco  
Golden Gate & Parker Avenues  
San Francisco, California  
May 2, 1968

The Adjutant General  
Department of the Army  
Washington 25, D.C.

Subject: Application of Louis A. Negre, Private,  
US 56669214 for discharge as a conscientious  
objector

Dear Sir:

I have interviewed Private Louis A. Negre in connection with his application for discharge from the United States Army as a conscientious objector.

The interview took approximately one hour, and I inquired thoroughly into Private Negre's religious training and belief.

I found that Private Negre was born in France into a devout Catholic family, and received his elementary and high school education at Catholic institutions in Bakersfield, California.

Private Negre regularly attends Catholic church services and based upon my interview I would classify him as a devout and conscientious Catholic.

His sincerity seemed to me unquestionable.

Private Negre stated that his objection to military service in any form at this time was based upon the religious principles announced in the Pastoral Constitution on the Church in the Modern World adopted by Pope Paul VI and the Fathers of the Sacred Council of the Catholic Church in 1965, and study of the moral and legal issues which he had made after his entry into the armed services and during training for combat duty.

Private Negre stated that he had formed the conscientious opinion that he could not participate in any form in the present war, and was required by his religious training and belief to refuse to participate.

I counseled Private Negre that under the beliefs and teaching of the Catholic Church he is obliged to examine and form his own conscience in respect to participating or refusing to participate in the war at this time. This obligation is clear from the Scriptures, and has been explicated many times by the Fathers and Doctors of the Church, and recently both by Pope John XXIII and Pope Paul VI in section 16 of the Pastoral Constitution:

"In the depths of his conscience, man detects a law which he does not impose upon himself, but which holds him to obedience. Always summoning him to love good and avoid evil, the voice of conscience can when necessary speak to his heart more specifically: do this, shun that. For man has in his heart a law written by God. To obey it is the very dignity of man; according to it he will be judged."

Section 16 goes on to make particular reference to the doctrine of invincible ignorance:

"Conscience frequently errs from invincible ignorance without losing its dignity."

In our interview we further discussed the particular requirements of conscience for participation in war set out in sections 79 and 80 of the Pastoral Constitution, prohibiting terrorism, actions designed for the methodical extermination of an entire nation or ethnic minority, any act of war aimed indiscriminately at the destruction of entire cities or of extensive areas along with their population, inhuman treatment of the wounded or captured soldiers, the requirement of resort to every means of peaceful settlement before resort to war, and prohibition of wars seeking subjugation of other nations.

I counseled Private Negre that he was obliged to form his own conscience after giving all deference to the information and advice of the duly constituted government authorities and other persons, and that under Catholic doctrine he would be in religious duty bound to act in conformity to his conscience, even though it might err through invincible ignorance: In the words of the Pastoral Constitution that he was subject:

". . . to the permanent binding force of universal natural law and its all embracing principles. . . . There-

fore, actions which deliberately conflict with these same principles as well as orders commanding such actions, are criminal. Blind obedience cannot excuse those who yield to them."

Private Negre stated to me that after earnest and prayerful consideration after he had entered the Army, that it was clear to him that in conscience he could not in conformity to the Catholic training and belief participate in war in any form at this time.

I advised Private Negre that under the Pastoral Constitution, however, if for reasons of conscience he must refuse to bear arms, he had a duty to "accept some other form of service to the human community" as stated in Section 79.

Private Negre stated that he was prepared to perform such alternative service to the human community.

It is my conclusion based upon the interview and the foregoing that Private Negre is in sincere conscience opposed to participation in any form in the war at this time, and therefore is obliged by his religious training and belief to follow his conscience in this matter.

I am a duly ordained priest in the Catholic Church.

Sincerely yours,  
James E. Straukamp, S.J.

Bakersfield, Calif.  
June 23, 1968

TO WHOM IT MAY CONCERN:

I have known Louis A. Negre all his life. He is my nephew. He attended St. Francis Parochial School and Our Lady of Perpetual Help Parochial School, he also attended Garces Catholic High School.

He has always given complete satisfaction to his parents, he is a very considerate boy and very honest. He is a devout Catholic and practices his religion faithfully attending the services regularly.

I am sure that Louis is sincere, when he states that he is conscientiously opposed in participating in the war in Viet Nam.

Sincerely,

Alice Chanley  
37 Panorama Drive  
Bakersfield, Calif.

Telephone FA 7-3041

1001 South Union Ave.

**MAISON JAUSSAND**

French Restaurant  
Bakersfield, California

June 10, 1968

**TO WHOM IT MAY CONCERN:**

I have known Louis August Negre since the year 1961. He worked for us in our restaurant until he entered the United States Army. We found him to be reliable, courteous, punctual and an excellent worker.

I found him to be loyal, faithful and a devote Catholic. He practiced his religion and believed in his religion.

**Mrs. Martin F. Jaussand**

Bakersfield, California  
June 23, 1968

TO WHOM IT MAY CONCERN:

I have known Louis A. Negre all his life, he is my nephew. He was raised to be a good Catholic, and attended Catholic Schools, from Kindergarten to High School. Louis has always given complete satisfaction to his parents, being good worker, obedient, sincere, very reliable and above all very religious, he practices his religion very well, always attending Church Services and taking his communion regularly.

When he states that he is opposed to the war in Vietnam on the grounds of being a conscientious objector, I am very certain that Louis is sincere, for after talking to him, I can vouch that he believes very strong in his convictions.

Sincerely,

John E. Cottalorda  
2924 Linden Ave.  
Bakersfield, Calif.

Bakersfield, Calif.  
June 8, 1968

TO WHOM IT MAY CONCERN:

I have known Louis Negre since he is four years old. He attended St. Francis Parochial School and Our Lady of Perpetual Parochial School and also Garces High School.

He is a Devout Catholic and I am sure he is sincere in stating that he is conscientiously opposed to participating in this war.

Sincerely,

Mrs. Marcelle Johnson  
200 Florida St.

Mrs. and Mr. Auguste Negre  
501 Niles Street  
Bakersfield, California

Bakersfield 7/1/1968

TO WHOM IT MAY CONCERN:

Our son Louis Auguste Negre has always been a good and understanding individual.

We can't say that he was sheltered as he grew up for it was at home that he learned his basic principles of the family living.

He always attended mass regularly. We had him attend Catholic school ever since he started for we felt that the only way he could grow up to be a man with high ideals he must have religious beliefs behind him.

His decisions had being a conscientious objector was purely his decision alone. We really know that after talking to him and knowing he his sincere in his action. We are willing and able to back him up all the in his belief.

We feel this letter will be of some spiritual help in his decision to live as a conscientious objector.

Thank You,  
Sincerely,

Auguste Negre  
Martha P. Negre



## DEPARTMENT OF THE ARMY

Headquarters, Western Area  
Military Traffic Management and Terminal Service  
Oakland Army Base  
Oakland, California 94626

In reply refer to

25 January 1969

HTW PA CH

SUBJECT: Request for Conscientious Objector  
Classification

TO: Whom it may concern

1. Under provisions of AR 635-20, I have interviewed Pvt Louis Negre, US 56 669 214, concerning his desire to be classified as a Conscientious Objector.

2. He is basing this on his religious beliefs in that he feels war, especially this war is immoral and thus for him to participate would be in violation of his conscience. The Catholic Church to which he belongs has no definite dogma in this regard. It has held and taught that a man who is sincere in his belief not to fight or to take part in a war which is against his conscience should be given a choice to serving his country in some other way.

3. On the basis of one interview it is very hard to judge the sincerity of anyone. However I feel this man is sincere. After being denied this status the first time, he tried unsuccessfully to resubmit his application with additional evidence. He even went so far as to go through a General Court Martial. I feel on this basis the man is sincere in his intention and his beliefs should be honored.

Charles J Richard  
Chap LTC

## STATEMENT

DANIEL H. HARRIS, Captain, 02321854, Hospital Company, Fort Ord, California, deposes and says:

Private Louis Negre was attached to the Hospital Company from Receiving Company and worked in the Hospital Company Orderly Room. As the Commanding Officer of Hospital Company, Private Negre worked directly under my control for the month of June 1968 and most of July 1968. I observed him to be a hard and capable worker grasping many of the functions of the Orderly Room. He was an asset to the Orderly Room and I hated to lose him. Private Negre appeared sincere in his belief concerning his application for conscientious objector as opposed to others I have met who, in my judgment, were not.

The foregoing is true to the best of my knowledge and belief.

Daniel H. Harris  
Captain

Subscribed and sworn to before me at Fort Ord, California this 25th day of November 1968.

Kenneth C. Brown  
Lieutenant Colonel, IG  
Inspector General

Robert R. Land, being duly sworn, deposes and says:

I served for the period from 9 December 1966 to 28 December 1967 in the Republic of South Vietnam, including combat duty, first as a doorgunner with the 118th Assault Helicopter Company, and then as a member of Long Range Reconnaissance Patrol and Security Platoons of Headquarters Company of the First Brigade of the 101st Airborne Division.

I am Specialist E-4 (Acting Sergeant) assigned to Company C USAG, Presidio, San Francisco, California. About September 1, 1968 I was the acting training NCO of Company C. I informed Lt. Swanson, the Executive Officer of Special Processing Detachment at the Presidio, that I required a clerk.

Lt. Swanson inquired for a qualified man and assigned PFC Negre to be the clerk working under my supervision. On September 11, 1968 PFC Negre commenced working directly under my supervision until October 20, 1968 when I was assigned to be the Company career counselor. Specialist Burnett took over as training NCO. My office continued to be in the same area as the training room, and I had daily contact with PFC Negre, and opportunity to observe his work.

During the time of approximately three months, I have found the work of PFC Negre to be of the highest caliber, his efficiency and his devotion to duty also to be of the highest caliber. Once shown how to do something, PFC Negre needed no prompting thereafter. I would consider it an honor to have PFC Negre work under me or with me in any place at any time.

During the time I have known PFC Negre I have found him to be of the highest moral character and law abiding in every particular. I have discussed his religious beliefs with PFC Negre upon several occasions. Based upon my observation I believe him to be sincere and conscientious in his religious beliefs.

Robert R. Land

## Office of the Staff Judge Advocate

AMPCO-SJA

28 January 1969

SUBJECT: Conscientious Objector Application of Private  
(E-3) Louis Negre, US 56 669 214

TO: Chief Overseas Replacement Station  
ATTN: Personnel Actions  
US Army Personnel Center  
Oakland Army Base, California 94626

1. On 27 January 1969 at 1500 hours, a conference was held in the conference room pursuant to AR 635-20, para 4d, in which Private (E-3) Negre was given the opportunity to express himself verbally as to why he should be discharged as a conscientious objector. Those present at the conference were Father J. Sterankamp, ordained Priest of the Roman Catholic Church, Specialist Five (E-5) James Cox, Private Negre and his attorney, Mr. Richard Harrington, and myself.

2. The following comments are based on my observations from that conference:

a. Private (E-3) Negre was born in Nice, France. He arrived with his family in the United States in 1952. One of the reasons his family left France, he states, was due to the "atrocities" in Vietnam. At that time, France was involved in war with Indo-China (Viet Nam).

b. The applicant was educated in Catholic schools through the 12th grade. He also received two years of education at Bakersfield Junior College, Bakersfield, California. His religious training has been extensive and he is extremely devout. His sincerity is shown by his willingness to be incarcerated for his beliefs. The roots of his beliefs are religious. The real question in this case is what are those beliefs. It is not that the beliefs are not based on religious grounds.

c. The applicant believes, in line with the dictates of the Catholic Church, that his conscience must be his guide. This is true even if his conscience is erroneous as long as it is

a "certain conscience." As stated in *Right and Reason, Ethics in Theory and Practice*, by Austin Fagothey:

... conscience is a subjective guide to conduct, that invincible error and ignorance are unavoidable, that any wrong which occurs is not done voluntarily and hence is not chargeable to the agent . . . . . The person is free of moral responsibility by the invincible ignorance bound up in his error. (38 *Right and Reason*)

The Church recognizes that PFC Negre may be objectively in error, but since he subjectively believes his decision to be correct, he must at all costs follow that belief. According to the author, Austin Fagothey, "one must never do an act that is intrinsically wrong, no matter what the penalty." (id. at Civil Law 347). The appellant sincerely believes that the war in Viet Nam is wrong and that his failure to object to serving in Viet Nam is in violation of his religious beliefs.

d. Private First Class Negre makes constant reference in his written applications to the "Viet Nam" situation. He stated in his 15 July 1968 application, "I am obligated by my conscience, under my religious training and belief, to refuse participation in any form in the war in Viet Nam." He disagrees with the philosophy that the United States is trying to help the Vietnamese people. He states in the same application, "I personally cannot believe that by being in Viet Nam we are helping the people there as we say." He is overly concerned with the type of war, not war itself. He is sincerely opposed to violence but it seems that he can in good conscience accept some "types" of war. He states that he accepts the "teachings of his Holiness Pope Paul VI as announced in the Pastoral Constitution as binding upon my conscience . . . ." (p. 5 of 15 July 1968 application). Pope Paul is also concerned with the "type" of war. In his statement in the Pastoral Constitution on the Church in the Modern World (7 December 1968), Pope Paul stated:

"But it is one thing to undertake military action for the just defense of the people, and something else again to seek the subjugation of other nations . . . .

Any act of war aimed indiscriminately at the destruction of an entire city or of extensive areas along with their population is a crime against God and man himself . . . ."

The war that concerned the Pope was a war of aggression rather than one of defense. He felt that the destruction of cities was a crime against God if it would serve no purpose. The war effort must not be indiscriminate. Pope Paul did not pass on the morality of a defensive war or the indiscriminate bombing of military targets.

e. PFC Negre is of the belief that the Viet Nam war is immoral and indiscriminate. He adopts the conclusions of Pope Paul VI, but makes his own judgment as to what is indiscriminate and what is aggression. He stated to Captain Leon Quinn, M.D., on 29 February 1968, that he felt the war was "unjust" and that the "illicit way it is being carried out makes it impossible for him to remain attached to the Army." (paraphrased by Captain Quinn). His objection to the Vietnam war was also apparent in my interview. He stated that he would serve in the United States in a non-combatant status if the United States was attacked. He would not carry a weapon, but he would assist in some other capacity as long as his support was indirect. He also would stay in the United States as a serviceman as long as his job was not combat oriented, even during the Viet Nam crisis.

f. It cannot be doubted that PFC Negre is opposed to killing if he has to be directly involved in it. He worked efficiently and effectively as a clerk at Fort Ord even though he possibly freed another person for combat duty in Viet Nam. He is not opposed to wearing the military uniform. He merely cannot directly participate in active combat whether as a foot soldier or as a medic. This is to him contrary to his belief that Viet Nam is an immoral war, and in violation of his religious training. If one can say that the wearing of a military uniform and the performance of a state-side job is not "bona fide conscientious objection to participation in war, IN ANY FORM," then this in itself would be a basis for denial of his application. But this is questionable and the real basis for my recommending rejection of the application is that, in my opinion, the applicant is objecting to a particular war, para 3b4, AR 635-20. His family left France because of the Viet Nam war, his Church leader speaks out against a particular type of war, and he is willing to serve in the United States in a non-combatant status even if the United States proper is involved in a war. He also includes in his application the pamphlet "Viet Nam and

your conscience," which categorizes the different wars. Viet Nam is the "dirty war of attrition." (p. 12).

3. It is my opinion that PFC Negre is conscientiously opposed to the use of force if that force has to be asserted by him. He is not conscientiously opposed to all types of war. His application under AR 635-20 should be denied, but he should be granted 1-A-0 classification under the purview of AR 600-200, para 2-12. He is in this sense a "conscientious objector and (is) conscientiously opposed to participation in *combatant* training and service." AR600-200, para 2-12.

Ronald K. Van Wert  
CPT JAGC  
Assistant Staff Judge Advocate

Priority

DA

To: CO USAPERSCEN OARS Oakland Calif.

Info: CG Ft Ord Oakland Calif.

UNCLAS

FM ACPC-SS

Subj: Separation

Ref: Your CMT 2 AMPCO-CO Dtd 29 Jan 69 concerning Pvt Louis Negre US 56669319—Appl such by EW up AR 635-20 is disap. Applicant's objection to service based upon a personal moral code which causes him to object to the war in Vietnam specifically and which disqualified him for separation on the grounds of conscientious objection.



IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In the Matter of the Application of  
LOUIS A. NEGRE;

*Petitioner,*

—v.—

STANLEY R. LARSEN, Commanding  
General, Sixth United States Army;  
JOHN H. DONALDSON, JR.; Command-  
ing Officer, Oakland Army Person-  
nel Center; RUSSELL A. MEREDITH;  
Commanding Officer, Overseas Re-  
placement Station, Oakland Army  
Personnel Center; Commanding  
Officer, Transient Company, Over-  
seas Replacement Station, Oakland  
Army Personnel Center; STANLEY  
RESOR; Secretary of the Army,

Petition for Writ  
of *Habeas Corpus*

*Respondents.*

The petition of LOUIS A. NEGRE respectfully shows:

1. Jurisdiction arises under 28 U.S.C. §2241, et seq. for the District Court to pass upon this petition for writ of habeas corpus.
2. Petitioner LOUIS A. NEGRE was inducted into the U.S. Army on August 30, 1967 and assigned Serial No. 56669214. During his training in the U.S. Army and not before that time, petitioner became opposed to participation in war in any form by reason of his religious training and belief. By reason of said religious training and belief, petitioner is unable to participate in war in any form.
3. Petitioner is presently illegally retained in the United States Army under assignment to report from Fort Ord, California to the Overseas Replacement Station, U.S. Army Personnel Center, Oakland, California, upon the date of this petition, for shipment to the Republic of Vietnam to participate in war. Petitioner has left Fort Ord and is in transit to the Oakland Army Personnel Center.
4. Upon February 26, 1968, petitioner applied for dis-

charge as a conscientious objector at the U.S. Army Personnel Center, Oakland, California. Said application was rejected by the commanding officer, Transient Company, who ordered petitioner to proceed to Vietnam to participate in war. Petitioners refused said order on grounds of his religious training and belief. The Commanding Officer, Transient Company, preferred court-martial charges against petitioner for disobedience of orders. Subsequently said charges were dropped and the application of February 26, 1968 was forwarded to the Secretary of the Army.

5. The Secretary of the Army denied the initial application on the grounds that petitioner's religion did not sustain his position, and that his petition lacked evidence supporting the sincerity of petitioner. About July 15, 1968 petitioner filed an additional application for discharge as a conscientious objector outlining the religious doctrine upon which his belief was founded and supporting his sincerity with appropriate letters.

6. The Commanding Officer, U.S. Army Personnel Center, Oakland, California, returned the aforesaid application "Not favorably approved." The Commanding Officer, Transient Company then on August 9, 1968 again ordered petitioner to proceed to Vietnam to participate in war, and petitioner again refused based upon his religious training and belief.

7. General court martial charges were preferred against petitioner for disobedience of orders, and trial held before a general court martial at the U.S. Sixth Army, Presidio, California. Petitioner was acquitted by the aforesaid court martial on January 22, 1969.

8. On January 27, 1969 petitioner filed a further and additional application for a discharge as a conscientious objector, a true copy of which is annexed hereto as Exhibit A. The chaplain of petitioner's faith, Lt. Col. Charles J. Richard, recommended approval of petitioner's application by endorsement dated 25 January 1969 annexed hereto as Exhibit B. Said recommendation concludes:

"I feel on this basis the man is sincere in his intention and his beliefs should be honored."

9. Nevertheless, and contrary to the law and evidence, petitioner was informed by his military superiors on the

date of this petition that the Secretary of the Army had denied petitioner's application.

10. Petitioner's military superiors gave petitioner orders to report on this date to the Overseas Replacement Station, U.S. Army Personnel Center, Oakland, California for transshipment to the Republic of Vietnam, to participate in the war at that place. Petitioner advised said superiors that he could hardly report to Oakland at noon when he received the orders at 10:00 a.m. in Fort Ord. Petitioner's superiors stated that petitioner would report in time if he reported by 12:00 noon on February 15, 1969, but declined to give petitioner written orders to that effect.

11. Petitioner is deprived of his liberty in violation of the constitution and laws of the United States in the following respects:

a. He is detained in the Army and subjected to coercion to participate in war, contrary to the express command of section 6(j) of the Universal Military Training and Service Act of 1967:

"Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief is conscientiously opposed to participation in war in any form."

b. He is detained in the Army and subjected to coercion to participate in war, contrary to Army Regulation 635-20.

c. Petitioner's detention and the coercion against him violate due process of law, equal protection of the law, and petitioner's free exercise of religion, under the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

12. The respondents and each of them have subjected petitioner to duress and coercion to proceed to Vietnam and participate in war in violation of petitioner's religious training and belief, and respondents and each of them threaten and will, unless restrained by this court, punish petitioner by charging him with violation of military law and trying him before a military court, in which evidence of petitioner's religious belief will not be accepted as a defense to the charges that will be brought against him.

Respondents and each of them have threatened to remove petitioner from this federal district to an Army base in the Republic of Vietnam. Petitioner has no adequate or speedy remedy except this petition for habeas corpus.

WHEREFORE, petitioner prays:

1. That a writ of habeas corpus, or in the alternative an order to show cause, issue directing the respondents and each of them to produce the body of LOUIS A. NEGRE before this court at the time as may be designated in the writ or in the order to show cause, and that respondents and each of them show cause, if they have any, why LOUIS A. NEGRE is detained by them and not liberated from such unlawful restraint.

2. That a restraining order issue restraining the respondents and each of them from removing LOUIS A. NEGRE or threatening, coercing, or ordering him to allow himself to be removed from this federal district pending the date of hearing on this petition.

3. That a restraining order issue restraining respondents and each of them from preferring charges, commencing, or prosecuting a court martial against LOUIS A. NEGRE pending the date of hearing on this petition.

4. That the Court order respondents to discharge LOUIS A. NEGRE with an honorable discharge from the United States Army; and

5. For such other relief as appears proper.

Dated: February 14, 1969.

Richard Harrington  
Attorney for Petitioner

#### VERIFICATION

Richard Harrington being duly sworn deposes and says:

I am attorney for petitioner and execute this verification on his behalf because his is in transit from Fort Ord, California to the Overseas Replacement Station, U.S. Army Personnel Center, Oakland, California. I have read the foregoing petition for habeas corpus and know its contents and the same are true of my own knowledge, except where stated on information and belief, and as to such statements I believe it to be true.

Dated: February 14, 1969.

Richard Harrington

Subscribed and sworn to before me  
this 14th day of February, 1969.

Lonell F. Chow  
Notary Public

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

LOUIS A. NEGRE,

*Petitioner,*

—V.—

STANLEY LARSEN, ET AL.,

*Respondents.*

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No. 50793

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ORDER DENYING PETITION FOR A WRIT OF HABEAS CORPUS. The sole claim upon which petitioner seeks relief in the instant habeas corpus proceedings is his assertion that the denial of his application for discharge from the United States Army is unsupported by any basis in fact.

In his application for discharge petitioner asserted that he was conscientiously opposed to participation in war in any form by reason of his religious training and belief.

The decision of the Department of the Army, which is based upon the petitioner's application, the record in support thereof and the opinion (recommendation) of the hearing officer, reads as follows:

"APPL SUBM BY EM UP AR 635-20 IS DISAP. APPLICANT'S OBJECTION TO SERVICE BASED UPON A PERSONAL MORAL CODE WHICH CAUSES HIM TO OBJECT TO THE WAR IN VIETNAM SPECIFICALLY AND WHICH DISQUALIFIES HIM FOR SEPARATION ON THE GROUNDS OF CONSCIENTIOUS OBJECTION."

(Exhibit I)

The opinion of the hearing officer concludes:

"It is my opinion that PFC Negre is conscientiously opposed to the use of force if that force has to be as-

serted by him. He is not conscientiously opposed to all types of war. His application under AR 635-20 should be denied, but he should be granted 1-A-O classification under the purview of AR 600-200, para 2-12. He is in this sense a 'conscientious objector and (is) conscientiously opposed to participation in *combatant* training and service.' AR 600-200, para 2-12."

(Exhibit II)

If the foregoing opinion has a basis in fact in support thereof, this court (regardless of the conclusion it would have reached were it permitted to substitute its judgment for that of the Army) must deny the petition, discharge the order to show cause and dismiss the proceedings.

While petitioner's frequent references to the war in Vietnam and his vigorous opposition thereto and condemnation thereof are compatible with a conscientious objection to all war by religious training and belief, and not necessarily the expression of "a personal moral code," nevertheless, it is a fact which, when considered together with other facts disclosed in the record, including the timing of the application and petitioner's request for non-combatant status with the restriction that he be assigned to duties in the United States, could sustain the opinion of the hearing officer and the decision of the Army. It therefore cannot be said that the decision of the Army is without a basis in fact in support thereof.

The petition for writ of habeas corpus is denied, the order to show cause is discharged and the proceedings are dismissed. The effect of this order is stayed ten (10) days from the date hereof to allow petitioner, should he choose to do so, to seek further relief from the Court of Appeals for the Ninth Circuit.

Dated: March 12, 1969.

Alfonso J. Zirpoli  
United States District Judge

[Heading Omitted]

NOTICE OF APPEAL

Notice is hereby given that petitioner LOUIS A. NEGRE hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order dismissing the petition for writ of habeas corpus entered March 13, 1969, and from the order denying rehearing and denying interlocutory relief entered March 27, 1969.

Dated: March 31, 1969.

Richard Harrington  
Attorney for Petitioner



UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

LOUIS A. NEGRE,

*Petitioner-Appellant,*

vs.

No. 24,067

STANLEY R. LARSEN, Commanding General  
Sixth United States Army, et al.,*Respondents-Appellees.*

[November 6, 1969]

Appeal from the United States District Court  
Northern District of CaliforniaBefore: CHAMBERS, KOELSCH, and KILKENNY,\*  
Circuit Judges.

## PER CURIAM:

Appellant challenges the validity of the District Court's order denying his petition for habeas corpus. He was inducted into the United States Army on August 30, 1967. On February 10, 1968, after receiving his basic training, he was ordered to Vietnam. On February 28th, while still in the United States, he started proceedings for separation as a conscientious objector. The proceedings culminated in a finding by Headquarters, Department of the Army, that he did not qualify, under applicable Army Regulations, as a conscientious objector. He has exhausted his administrative remedies.

Simply stated, the issue before us is whether there is a basis in fact for the finding and decision of the Department of the Army. The scope of review in a case such as this is one of "the narrowest known to the law". *Bishop v. United States* (9th Cir., June 19, 1969, No. 22759). An exhaustive analysis of the record requires us to conclude that there was

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\* Hon. John F. Kilkenny was a United States District Judge, sitting with this court by designation, at the time oral argument in this case was heard.

a basis in fact for the finding that appellant was not entitled to separation from the Army as a conscientious objector under Army Regulation No. 635-30(1)(3).<sup>1</sup>

Our analytical view of the record reveals that appellant has a personal moral code based on his sociological and philosophical views, rather than a conscientious objection to participation in war in any form by reason of religious training and belief. He objects to the war in Vietnam, not to all wars. It was not until he was faced with participation in the Vietnamese conflict that his beliefs concentrated sufficiently to express an objection. He does not express an objection to the nation's military activities in Korea, Japan, West Germany and other parts of the world. Nor, does he object to what he terms non-combatant duty in the Army in the United States. Clearly, his views are completely inconsistent with an objection to "war in any form." Although he would refuse to act as a medical corpsman in Vietnam, he would serve in essentially the same capacity in the United States. Beyond question, there was a basis in fact for the conclusion of the Department of the Army that appellant did not qualify, for separation, as a conscientious objector.

Based on *United States v. Sisson*, 297 F. Supp. 902 (D. Mass. 1969), appellant argues that a denial of conscientious objector classification to him on the ground that his beliefs

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<sup>1</sup>"1. *Purpose.* This regulation sets forth the policy, criteria, and procedures for disposition of military personnel who, by reason of religious training and belief, claim conscientious objection to participation in war in any form.

\* \* \* \* \*

3. *Policy.* a. Consideration will be given to requests for separation based on bona fide conscientious objection to participation in war, in any form, when such objection develops subsequent to entry into the active military service.

b. . . . Requests for discharge after entering military service will not be accepted when . . .

\* \* \* \* \*

(3) Based on essentially political, sociological, or philosophical views, or on a merely personal moral code.

(4) Based on objection to a particular war.

c. All requests for discharge based on conscientious objections will be considered on an individual basis in accordance with the facts and special circumstances in a particular case."

\* \* \* \* \*

are purely "personal," as opposed to "religious," denies to him equal protection of the law. We believe that *Sisson* was wrongly decided and decline to follow it.

WE AFFIRM.

# Supreme Court of the United States

No. 1669 Misc., October Term, 1969

LOUIS A. NEGRE,

*Petitioner,*

—v.—

STANLEY R. LARSEN, ET AL.

On petition for writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1758, placed on the summary calendar, and set for oral argument immediately following No. 1170.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 29, 1970